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In the

Supreme Court of the United States.

OCTOBER TERM, 1941.

ASSOCIATED HOSPITAL SERVICE CORPORATION OF MASSACHUSETTS, *Petitioner*,

v.

THOMAS B. HASSETT, FORMER ACTING COLLECTOR, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF

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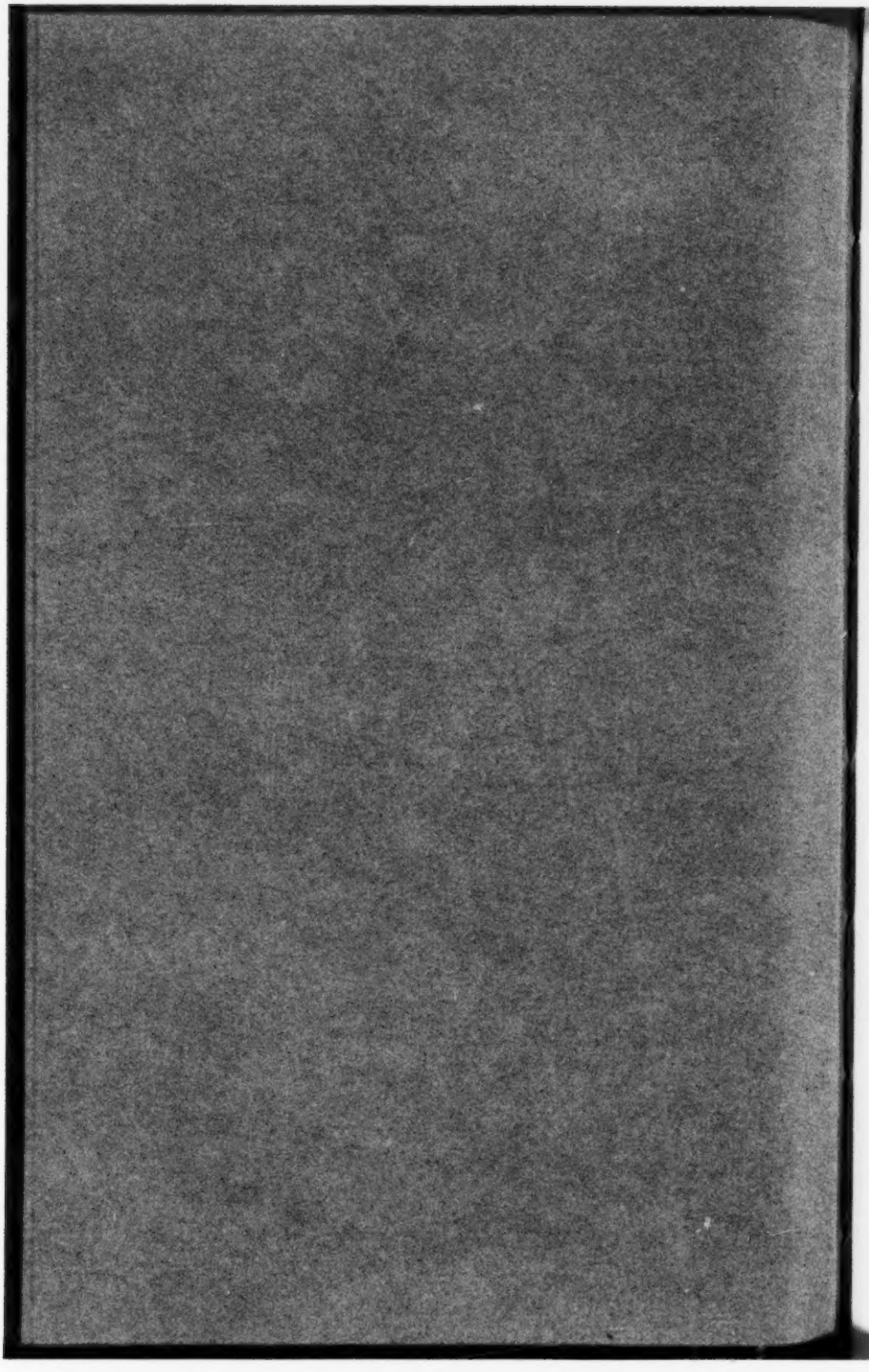

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THOMAS B. HASSETT, FORMER ACTING COLLECTOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This is a petition for a writ of certiorari to review the final judgment of the Circuit Court of Appeals (Magruder, J., dissenting) entered February 4, 1942 (R. 51), reversing a judgment of the District Court for the District of Massachusetts entered March 26, 1941, in favor of the plaintiff, this petitioner.

Statement of the Matter Involved.

This action at law was brought by complaint filed April 16, 1940, to recover taxes illegally collected by the defendant under the Social Security Act (49 Stat. 620, c. 531). Said Act provides in part (section 811 (b) (8), now amended

and part of Internal Revenue Code, section 1426 (b) (8)) for exemption from the taxes for—

> "(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

The plaintiff is incorporated under General Laws of Massachusetts, chapter 176A, as added by chapter 409 of the Acts of 1936. Said chapter exclusively deals with the incorporation and activities of "Non-Profit Hospital Service Corporations." Sections 1, 2 and 3 of said chapter specify the general nature of the business of such a corporation, the requirement of control by representatives of public and charitable hospitals, and the approval of rates by the commissioners of insurance and of public welfare, and sections 4 to 9 provide certain other controls and administrative requirements. Section 10 reads as follows:

> "*Exemption from Taxation:* Every corporation subject to this chapter is hereby declared to be a charitable and benevolent corporation, and its property shall be exempt from state, county, district and municipal taxes."

Evidence of the operations of the plaintiff was submitted to the District Court on a statement of agreed facts (R. 6-32, with exhibits) and the testimony of one witness (R. 38-47). The District Judge found as a fact that the plaintiff

was organized and operated under said chapter 176A (R. 35).

The nature of the plaintiff's activities is set out in some detail in the opinion of the Circuit Court (R. 52-54, 59-60). The plaintiff is the Massachusetts representative of a nationwide movement for non-profit hospital service plans under the auspices of the American Hospital Association. The plaintiff, in common with other plans, contracts with public, charitable and other approved hospitals for furnishing hospital care to its members, and contracts with members of the public to furnish them such care. There are no shareholders and there is no provision for distribution of surplus.

As a result of consideration of the nature and characteristics of the plaintiff and of the fact that Congress, in incorporating a hospital service plan in all respects like the plaintiff, declared it to be charitable and tax-exempt (*infra*, p. 5), the District Judge found as a fact that the plaintiff is charitable and ruled that it was exempt from Social Security taxes (R. 37).

The government appealed and the Circuit Court reversed with a 2 to 1 opinion.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on February 4, 1942. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

Is the petitioner "a corporation . . . organized and operated exclusively for . . . charitable purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part

of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation''?

Reasons for Granting the Writ.

1. The decision of the issue in this case is a matter of public importance to the people of a number of states and will serve to define the extent to which the states are to be encouraged to provide for their citizens inexpensive methods of health protection through charitable corporations.

At the time of the hearing in the District Court there were hospital service plans in 38 states (R. 38), some without benefit of special enabling legislation. There are now throughout the country over 70 plans, having an aggregate of over 8,000,000 subscribers.

There is enabling legislation in 29 states and the District of Columbia. Most of the enabling acts are similar to the Massachusetts statute. The several legislatures have seen the advantage to the health of their citizens of minimum cost hospitalization protection furnished through the cooperation of local hospitals by a central collecting and disbursing organization. In most instances tax exemption has been granted, the profit motive has been removed and the dedication of surplus to charitable purposes has been required by a legislative condition that the organization qualify as a charity.

To permit the tax in this case to be collected is to deny to the legislature creating a corporation the right to condition the existence of the corporation on its maintenance of charitable characteristics.

2. The decision of the Circuit Court of Appeals in this case is in conflict with the local law. The core of the decision is that the plaintiff is not a charity under Federal law. The Federal law as to what constitutes a charity is like the

Massachusetts law. Therefore the decision implies that the plaintiff is not a charity under Massachusetts law.

The plaintiff is, however, a charity under Massachusetts law for the legislature has said so in express words in the enabling Act. The local law creates the characteristics of its own corporations. The Federal law and the Massachusetts law are alike in determining what are the characteristics of a charity. Therefore the plaintiff has the characteristics of a charity under the law common both to the United States and to Massachusetts.

3. The decision of the Circuit Court of Appeals in this case conflicts with the Act of Congress creating a hospital service plan in the District of Columbia and defining such a plan as charitable.

> 53 Stat. (part 2) c. 698.
> Public No. 395, 76th Congress, 1st Session.

This Act incorporates certain persons under the name of "Group Hospitalization, Inc.," and gives the corporation powers and subjects it to controls similar in all respects to the powers and controls of a corporation organized under chapter 176A of the General Laws of Massachusetts. Section 8 of this Act says:

> "This corporation is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from taxation other than taxes on real estate."

Congress has declared that a non-profit hospital service corporation similar to the plaintiff is a charity. Such controlling declaration is in conflict with the decision of the Circuit Court here.

4. The decision here is in substantial conflict with the decision of the Seventh Circuit Court in *Harrison* v. *Barker Annuity Fund*, 90 Fed. (2d) 286, the decision in the Third

Circuit Court of *Mutual Aid & Benefit Association* v. *Commissioner*, 42 Fed. (2d) 619, and *Gimbel* v. *Commissioner*, 54 Fed. (2d) 780, and the decision of the Fifth Circuit in *Eagan* v. *Commissioner*, 43 Fed. (2d) 881.

The words of the income tax (Internal Revenue Code, section 101 (6) and section 23 (q)), of the gift tax (Internal Revenue Code, section 1004 (a) (2) (B)) and of the estate tax (Internal Revenue Code, section 812 (d)) relating to charitable exemptions or deductions are similar to those of the Social Security Act. In each of the foregoing cases the Court, with or without the benefit of state legislation, held a mutual benefit organization to be a charity. Even if the plaintiff is nothing more than a mutual benefit organization, offering membership to a large number of people throughout the states, it would be held a charity following these cases.

In its conception of a charity the decision here is in conflict with the old decision of the Eighth Circuit Court in *Union Pacific Railway Co.* v. *Artist*, 60 Fed. 365. There the Court held a non-profit hospital plan operated by the railway for its employees and financed by employees and by the Company to be a charity.

5. The Federal question of interpretation of exemptions of the Social Security Act has been decided by the Circuit Court contrary to decisions of this Court. The Federal law is that state law creates rights and assigns characteristics to those within its jurisdiction. That Federal law has not been followed by the Circuit Court here.

Wherefore your petitioner respectfully prays that the petition for a writ of certiorari be granted.

JOHN P. CARR,
Attorney for Petitioner.

Of Counsel:
ROGER W. HARDY.